

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.803 OF 1998

TO

CIVIL REVISION APPLICATION NO.807 OF 1998

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?
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RATNIBEN NATHALAL BADABHAI

VERSUS

RAMANLAL SHANKARLAL PATEL

Appearance:

MR MR SHAH for petitioners

None present for Respondents

Coram: S.K. Keshote,J

Date of decision:24/02/1999

C.A.V. ORDER

#. As all these civil revision applications have arisen from the one and the same motor vehicle accident, they are being taken up for hearing together and are being disposed of by this common order.

#. The claimants-petitioners in these civil revision applications filed application for grant of interim compensation on the principle of "no fault liability" as provided under Section 140 of the Motor Vehicles Act, 1988. Under the order impugned in these civil revision applications, this application came to be granted against only the owner of the vehicle but no order has been passed against the insurance company. Hence these civil revision applications.

#. The offending vehicle in this case is mini luxury bus No.RJ-03-P-0277. The learned tribunal has found prima-facie that this vehicle is involved in the accident in which the claimants sustained injuries or bread winner of some of the claimants have died. The insurance company has been exonerated only on the ground that xerox copy of insurance policy which has been produced, there is overwriting on the date of issue of police and date of expiry of insurance.

#. The learned counsel for the claimants-petitioners in these civil revision applications contended that the learned Tribunal has committed serious error of jurisdiction in not relying on this policy. For the perusal of this court, he produced two documents and xerox of which have been taken on record. In the first document, I find that the vehicle number has been given but I do not find therein what was the validity period of the insurance policy, the reference of which has been made therein and secondly the insurance policy is in the name of Shri Ramanlal but this letter is addressed to Shri Rajeshkumar Sukhlal Jain. However, in the policy, it is mentioned that interest in the policy is transferred from Ramanlal to Rajeshkumar. The policy number as given out on the policy as produced on the record also do not tally. Then comes another letter of 14th May 1997, but that is also hardly of any help to the petitioners at this stage for the reason that the vehicle number has not been given in this letter and secondly this letter has been addressed to Shri Ramanlal S. Patel. Though these are the prima-facie considerations

for the purpose of deciding whether at this stage, the insurance company should be held to be liable for this interim compensation or not and the tribunal has not decided finally anything on merits. This is only interlocutory stage and if on the basis of the policy produced some doubt has been created in the mind of the tribunal, I fail to see how the order passed by the tribunal can be said to be perverse. As stated earlier, it is only an interlocutory order and it is still open to the claimants to prove that the vehicle was covered under the insurance policy on the date of accident and the final award can be passed against insurance company but at this stage, on the basis of the document produced, the consideration to the extent where it is sought to be agitated by the claimants-petitioners need not be gone into. Moreover, it is not the case where the interim compensation has not been awarded. The amount of interim compensation has been awarded against the owner of vehicle but the insurance company has not been made liable in this case. The Tribunal has jurisdiction to decide whether on the basis of documentary evidence produced the insurance company should be made liable for payment of interim compensation or not and if on appreciation of evidence it has decided otherwise, it cannot be said that on the basis of document where there is overwriting of both the date of the issue of policy and the date of expiry of policy such view could not have been taken by the Tribunal. So otherwise also, this case does not fall under any of the clauses (a), (b) or (c) of sub-section 1 of Section 115 of the Code of Civil Procedure, 1908 which calls for interference of this Court.

#. Not only this but also this case further does not fall under any of the clauses (a) or (b) of proviso to subsection 1 of Section 115 of the Code of Civil Procedure, 1908. If ultimately the claimants-petitioners succeed in proving their claim against the insurance company also, the Tribunal will pass the final award accordingly. There is yet another aspect with reference to which the matter needs to be considered. This Court has taken the view that the guidelines laid down by the Full Bench of this Court in the case of Muljibhai and as confirmed by the Apex Court are to be applied to the disbursement and investment of the amount of interim compensation to be awarded by the Motor Accident Claims Tribunal under Section 140 of the Motor Vehicles Act, 1988. So whatever the amount which has been awarded under Section 140 of the Motor Vehicles Act, 1988, has to be invested in the long term F.D.R. and at the most in case the insurance company would have been made a party,

the claimants-petitioners would have got the monthly interest. So otherwise also, exoneration of the insurance company from the liability of payment of the amount of interim compensation at this stage will not occasion failure of justice or cause irreparable injury to the petitioners. If ultimately they succeed, they will get this amount with interest at the rate at which they would have received interest on this amount of interim compensation during the pendency of the claim application. So they will also not suffer any loss of interest. Ultimately on success in the case whatever the amount of interim compensation paid has to be deducted from the amount of compensation awarded in the final award. So if the matter is considered from any angle, it cannot be said to be a case where interference of this Court under Section 115 of the Code of Civil Procedure, 1908, is called for. By filing of these civil revision applications, in fact and substance, the disposal of the claim applications have been delayed. The claim applications are of the year 1995 and more than three years have already passed, but still they have not been reached to the stage of final hearing. After the order impugned in these civil revision application, more than one year has already been passed. Though on merits, I do not find any case to interfere with the order of the learned tribunal in these matters but learned tribunal is directed to decide these motor accident claim petitions within a period of six months from the date of receipt of writ of this order. The learned Tribunal, while deciding the matters finally, will not be influenced in any manner whatsoever with the observations made in the order impugned in these civil revision applications or by this Court in this order. The matter has to be decided independently on the basis of evidence produced by the parties. Subject to these observations, these civil revision applications fail and the same are dismissed. Interim relief, if any, granted in these civil revision applications is vacated.

(S.K.Keshote, J.)

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